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DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-801]

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Notice of Court Decisions Not in Harmony with Final Results of Administrative Review and Notice of Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On May 24, 2018, the United States Court of International Trade (Court) issued final judgments in *An Giang Fisheries Import and Export Joint Stock Company et al. v. United States*, Consol. Court No. 14-00109, sustaining the Department of Commerce's (Commerce) remand results for the ninth administrative review of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (Vietnam) covering the period of review (POR) August 1, 2011, through July 31, 2012. Commerce is notifying the public that the Court's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to certain exporters.

DATES: Applicable June 3, 2018.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-2243.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 2014, Commerce issued its *AR9 Final Results*.¹ On July 2, 2014, Commerce issued its *AR9 Amended Final Results*.² Agifish et al.³ and the petitioners⁴ timely filed complaints with the Court and challenged certain aspects of the *AR9 Amended Final Results*. On June 7, 2015, the Court remanded Commerce's *AR9 Amended Final Results*.⁵

In the first remand, in accordance with the Court's instructions, Commerce reconsidered its selection of the surrogate value (SV) for rice husk and provided further explanation concerning the cap to the fish oil by-product offset in Vinh Hoan Corporation's⁶ margin calculation.⁷ Additionally, and in accordance with the Court's instructions, Commerce made changes to Vinh Hoan's margin calculation, specifically, by adjusting the denominators for Vinh Hoan's factors of production (FOPs) to exclude water weight, and subsequently recalculating Vinh Hoan's net U.S. price of sales for subject merchandise on a net weight basis exclusive of water weight.⁸ The Court upheld our findings on all but one of these issues, *i.e.*, the fish oil by-

¹ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012*, 79FR 19053 (April 7, 2014) (*AR9 Final Results*).

² See *Amended Final Results of Antidumping Duty Administrative Review; 2010-2011*, 79 FR 37714 (July 2, 2014) (*AR9 Amended Final Results*) and accompanying Ministerial Error Memorandum.

³ These include An Giang Fisheries Import and Export Joint Stock Company, Asia Commerce Fisheries Joint Stock Company, Cuu Long Fish Joint Stock Company, Hiep Thanh Seafood Joint Stock Company, International Development and Investment Corporation, NTSF Seafoods Joint Stock Company, QVD Food Company Ltd., Southern Fishery Industries Company, Ltd., and Vinh Hoan Corporation (collectively Agifish et al.).

⁴ Catfish Farmers of America and the following individual U.S. catfish processors: America's Catch, Consolidated Catfish Companies, LLC dba Country Select Catfish, Delta Pride Catfish, Inc., Harvest Select Catfish, Inc., Heartland Catfish Company, Pride of the Pond, and Simmons Farm Raised Catfish, Inc. (collectively, the petitioners).

⁵ See *An Giang Fisheries Import and Export Joint Stock Company et al. v. United States*, Court No. 14-00109, Slip Op. 16-55 (CIT June 7, 2016).

⁶ Vinh Hoan was one of two mandatory respondents selected by Commerce. (Vinh Hoan) includes Vinh Hoan Corporation and its affiliates Van Duc Food Export Joint Company and Van Duc Tien Giang (VDTG).

⁷ See *Final Results of Redetermination Pursuant to An Giang Fisheries Import and Export Joint Stock Company et al. v. United States*, Consol. Court No. 14-00109, and Slip Op. 16-55, dated February 9, 2017 (First Remand Results).

⁸ *Id.*

product offset.⁹

On July 10, 2017, the Court remanded Commerce's First Remand Results.¹⁰ In the second remand, in accordance with the Court's instructions, Commerce provided further explanation with respect to the calculated fish oil by-product offset and its superiority as compared to the other fish oil SVs on the record.¹¹ On September 22, 2017, Commerce filed the Second Remand Results with the Court.

As a result of the AR9 Remand Results,¹² there are calculation changes. After accounting for all such changes and issues in the AR9 Remand Results, the resulting antidumping duty margin for Vinh Hoan is *de minimis*. Because Vinh Hoan's margin is now *de minimis*, Agifish's margin (unchanged) becomes the margin (\$1.20 per kilogram) for those companies not individually examined but receiving a separate rate. On May 24, 2018, the Court sustained the AR9 Remand Results.¹³

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), Commerce is notifying the public that the final judgment in this cases is not in harmony with Commerce's final results of the antidumping duty administrative review of the antidumping duty order on fish fillets from Vietnam covering the POR. Thus, Commerce is amending the *AR9 Amended Final Results* with respect to the weighted-average dumping

⁹ See *An Giang Fisheries Import and Export Joint Stock Company et al. v. United States*, Consol. Court No. 14-00109, Slip Op. 17-00082 (July 10, 2017) (*An Giang Fisheries*).

¹⁰ See *Vinh Hoan Corporation et al. v. United States*, Court No. 14-00109, Slip Op. 17-82 (CIT July 10, 2017).

¹¹ See Final Results of Redetermination Pursuant To Court Remand, Consol. Court No. 14-00109, Slip Op. 17-00082 (CIT July 10, 2017), dated September 22, 2017, (Second Remand Results).

¹² See First Remand Results and Second Remand Results (collectively, AR9 Remand Results)

¹³ See *An Giang Fisheries Import and Export Joint Stock Company et al. v. United States*, Consol. Court No. 14-109, Slip Op. 18-60 (CIT May 24, 2018).

margins for Vinh Hoan, and the separate rate respondents.¹⁴

Timken Notice

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (Act), Commerce must publish a notice of a court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The Court’s May 24, 2018, judgment sustaining the AR9 Remand constitutes a final decision of the Court that is not in harmony with Commerce’s *AR9 Amended Final Results*. This notice is published in fulfillment of the publication requirement of *Timken*.

Amended Final Results

Because there is now a final court decision, Commerce is amending the *AR9 Amended Final Results* with respect to Vinh Hoan, and the separate rate respondents. The revised weighted-average dumping margins for these exporters during the period August 1, 2011, through July 31, 2012, are as follows:

Exporter Name	Weighted-Average Dumping Margin (Dollars Per Kilogram)
Vinh Hoan Corporation ¹⁵	0.00

¹⁴ These include: An My Fish Joint Stock Company; Anvifish Joint Stock Company; Asia Commerce Fisheries Joint Stock Company; Binh An Seafood Joint Stock Company; Cadovimex II Seafood Import-Export and Processing Joint Stock Company; Cantho Import-Export Seafood Joint Stock Company; Cuu Long Fish Import-Export Corporation; Cuu Long Fish Joint Stock Company; East Sea Seafoods Limited Liability Company; Green Farms Seafood Joint Stock Company; Hiep Thanh Seafood Joint Stock Company; Hoa Phat Seafood Import-Export and Processing JSC; International Development & Investment Corporation; NTSF Seafoods Joint Stock Company; QVD Food Company Ltd.; Saigon Mekong Fishery Co., Ltd.; Seafood Joint Stock Company No.4 Branch Dongtam Fisheries Processing Company; Southern Fisheries Industries Company Ltd.; Sunrise Corporation; Thien Ma Seafood Co., Ltd.; To Chau Joint Stock Company; Viet Phu Food & Fish Corporation; and Vinh Quang Fisheries Corporation (collectively, separate rate respondents).

¹⁵ This rate is applicable to the Vinh Hoan Group which includes: Vinh Hoan, Van Duc, and VDTG.

Hung Vuong Group ¹⁶	1.20
An My Fish Joint Stock Company	1.20
Anvifish Joint Stock Company ¹⁷	1.20
Asia Commerce Fisheries Joint Stock Company	1.20
Binh An Seafood Joint Stock Company	1.20
Cadovimex II Seafood Import-Export and Processing Joint Stock Company	1.20
Cantho Import-Export Seafood Joint Stock Company	1.20
Cuu Long Fish Import-Export Corporation ¹⁸	
Cuu Long Fish Joint Stock Company	1.20
East Sea Seafoods Limited Liability Company ¹⁹	1.20
Green Farms Seafood Joint Stock Company	1.20
Hiep Thanh Seafood Joint Stock Company	1.20
Hoa Phat Seafood Import-Export and Processing JSC	1.20
International Development & Investment Corporation	1.20
NTSF Seafoods Joint Stock Company	1.20
QVD Food Company Ltd. ²⁰	1.20
Saigon Mekong Fishery Co., Ltd.	1.20
Seafood Joint Stock Company No.4 Branch Dongtam Fisheries Processing Company	1.20
Southern Fisheries Industries Company Ltd.	1.20
Sunrise Corporation	1.20
Thien Ma Seafood Co., Ltd.	1.20
To Chau Joint Stock Company	1.20
Viet Phu Food & Fish Corporation	1.20
Vinh Quang Fisheries Corporation	1.20

Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and

¹⁶ This rate is applicable to the Hung Vuong Group, which includes: An Giang Fisheries Import and Export Joint Stock Company, Asia Pangasius Company Limited, Europe Joint Stock Company, Hung Vuong Joint Stock Company, Hung Vuong Mascato Company Limited, Hung Vuong—Vinh Long Co., Ltd., and Hung Vuong—Sa Dec Co., Ltd.

¹⁷ Includes the trade name Anvifish Co., Ltd., and Anvifish JSC.

¹⁸ Includes the trade name CL Panga Fish.

¹⁹ Includes the trade names East Sea Seafoods LLC and ESS.

²⁰ This rate is also applicable to QVD Dong Thap Food Co., Ltd. (Dong Thap) and Thuan Hung Co., Ltd. (THUFICO). In the second review of this order, Commerce found QVD, Dong Thap and THUFICO to be a single entity, and because there has been no evidence submitted on the record of this review that calls this determination into question, we continue to find these companies to be part of a single entity. Therefore, we will assign this rate to the companies in the single entity. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53387 (September 11, 2006).

conclusive court decision. In the event the Court's ruling is not appealed or, if appealed, upheld by the CAFC, Commerce will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise exported by the companies identified above using the assessment rate calculated by Commerce in the AR9 Remand Results and listed above.

Cash Deposit Requirements

Unless the applicable cash deposit rates have been superseded by cash deposit rates calculated in an intervening administrative review of the AD order on frozen fish fillets from Vietnam, Commerce will instruct U. S. Customs and Border Protection to require a cash deposit for estimated AD duties at the rate noted above for each specified exporter and producer combination, for entries of subject merchandise, entered or withdrawn from warehouse, for consumption, on or after June 3, 2018.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: July 25, 2018.

Gary Taverman,

Deputy Assistant Secretary

*for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance.*

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